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S E C R E T SECTION 01 OF 03 MADRID 001914

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TAGS: [PTER](#) [PGOV](#) [PREL](#) [SP](#)  
SUBJECT: COURT FREES "SPANISH TALIBAN"

REF: A. 2005 MADRID 3528  
[1](#)B. TD-314/09169-05

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Classified By: A/DCM Kathleen Fitzpatrick; reasons 1.4 (B) and (D)

[1](#)1. (C) Summary. The Spanish Supreme Court announced July 24 that it had annulled the six-year prison sentence handed down in September by Spain's National Court against accused terrorist Hamed Abderrahaman Ahmed, known in the media as the "Spanish Taliban." Abderrahaman, a Spanish national captured in Afghanistan by U.S. forces and held at Guantanamo until being turned over to Spanish authorities in February 2004, was immediately released from prison. The Supreme Court found that Spanish prosecutors could not use any evidence collected during their interview with Abderrahaman while he was being held at Guantanamo under conditions the Court termed "impossible to explain, much less justify." The Court threw out other evidence collected against Abderrahaman prior to his capture in Afghanistan and determined that prosecutors had skewed Abderrahaman's testimony to incriminate him. This finding had an immediate effect on the case of Lahcen Ikassrien, a Moroccan national and former Guantanamo detainee transferred to Spanish custody in July 2005. Prosecutors announced their recommendation to release Ikassrien on bail while awaiting trial on terrorism charges, while Abderrahaman's attorney said he would sue the U.S. Government for suffering allegedly suffered by Abderrahaman during his incarceration in Guantanamo. Spanish officials involved in the Abderrahaman case expressed disappointment in his release, but also said that he was not particularly dangerous and dismissed him as a threat. This ruling does not indicate a reduction in counter-terrorism cooperation by Spanish law enforcement officials, but the Supreme Court's decisions will clearly have to be taken into account as we pursue improved judicial cooperation with Spain. The Spanish judicial branch carefully guards its hard-won independence, meaning it will not shy away from rulings that cut across Spanish Government (or USG) objectives. End Summary.

//BACKGROUND//

[1](#)2. (S) According to sentencing documents, Abderrahaman established contacts with al-Qa'ida elements in the Spanish enclave of Ceuta and, in August 2001, traveled to Afghanistan for religious and military training in Kandahar. When the U.S. invaded Afghanistan in the wake of the September 11 attacks, Abderrahaman fled to Pakistan, where he was reportedly captured by the Pakistani military, who turned him over to U.S. forces. Abderrahaman was transferred to Guantanamo, where he was held until he was turned over to Spanish authorities in February 2004 in response to a request

by magistrate Baltasar Garzon, who wanted to investigate Abderrahaman in connection with the trial of al-Qa'ida cell leader Imad Eddin Barakat Yarkas. Under the terms of that transfer, Spanish authorities agreed to:

- Be prepared to detain, investigate, and prosecute Abderrahaman, while treating him humanely;
- Share with USG authorities any information developed during the investigation;
- Provide reasonable notice of any decision to release or transfer Abderrahaman;
- Conduct surveillance of Abderrahaman following his release, and share any relevant information with the U.S.; and,
- Provide U.S. officials access to Abderrahaman if necessary.

13. (S) Garzon released Abderrahaman on bail in July 2004, finding that Spanish National Police interrogations of Abderrahaman while he was being held in Guantanamo could not be used as evidence. However, the National Police had previous wiretap evidence linking Abderrahaman to Barakat Yarkas as well as what they viewed as incriminating statements by Abderrahaman to police investigators following his release from Guantanamo. In early 2005, a confidential police assessment shared with USG officials concluded that Abderrahaman had the "mental maturity of a 12-year-old," was "naive and foolish," and did not seem to comprehend the gravity of his detention in Guantanamo. But the report also noted Abderrahaman's consistent statements to Spanish police that he wanted to "go fight with the Chechens and kill Russians." (REF B). Police provided this information to prosecutors and to the National Court, which found

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Abderrahaman guilty in September 2005 of "membership in a terrorist organization." The case was then automatically transferred to the Supreme Court to either overturn or confirm the sentence.

//SUPREME COURT THROWS OUT CONVICTION//

14. (U) The Supreme Court overturned Abderrahaman's conviction on the basis that the National Court had allowed prosecutors to use inadmissible evidence to establish Abderrahaman's guilt and that prosecutors had improperly translated Abderrahaman's incriminating testimony. Specifically, the Supreme Court found that testimony obtained by Spanish police investigators during the course of interviews of Abderrahaman in Guantanamo could not be used in court because the "interrogations, euphemistically called "interviews," took place under unequal circumstances because (the defendant) was in detention" at the time of the interrogations. Further, the Supreme Court finding stated that "although it is not for (this Court) to issue a pronouncement regarding the situation of those held in indefinite detention, we must state that, as Ahmed was held in detention under the authority of the U.S. military since he was turned over (to the U.S.) on an undetermined date, all information obtained under such conditions must be declared totally null and nonexistent." The Court did go on to pronounce its position on Guantanamo, criticizing the detention of "hundreds of people, among them Ahmed, without charges, without rights, without controls, and without limits," a situation the Court termed "impossible to explain, much less justify."

15. (U) Just as damaging to the prosecution's case was the Court's decision to throw out telephone intercepts incriminating Abderrahaman obtained during the course of the Barakat Yarkas investigation and long before Abderrahaman's detention in Afghanistan. The judges found that the intercepts had been obtained improperly (NOTE: the Supreme Court had already ruled against allowing the intercepts

during its review of the convictions of Barakat Yarkas cell members). The Supreme Court also determined that prosecutors had improperly translated Abderrahaman's statements and had omitted exculpatory evidence, such as Abderrahaman's declaration that he did not belong to al-Qa'ida and had not received military training. The Court criticized prosecutors for omitting a document "signed in Guantanamo by Abderrahaman before being turned over to Spanish authorities," a document in which U.S. authorities allegedly acknowledged that Abderrahaman was not a member of al-Qa'ida. On this basis, the Supreme Court found that the case against Abderrahaman failed to meet the minimum standards established by the European Court of Human Rights for a finding of "guilty beyond a reasonable doubt."

16. (C) Legat contacted Eduardo Fungairino, currently the head of an anti-terrorism office assigned to the Supreme Court and formerly the chief of the National Prosecutor's office, on July 25 for his insights into the Abderrahaman decision. Fungairino (strictly protect) dismissed the Supreme Court decision as "facile and populist." He said that while he acknowledged errors on the part of National Court prosecutors in the case (and the legal problems generated by the circumstances at Guantanamo), in his view the Supreme Court ignored evidence of Abderrahaman's terrorist training in Pakistan and Afghanistan, activities that are clearly criminal under Spanish law. Fungairino indicated that one consolation, in his view, was that Abderrahaman did not represent a serious threat, echoing police assessments that Abderrahaman was a pawn in events beyond his understanding (see para 3).

//ABDERRAHAMAN PLANS TO SUE USG//

17. (U) In a July 25 press conference organized by Abderrahaman attorney Marcos Garcia Montes, Abderrahaman told reporters that he hoped to gain employment as a truck driver and claimed that his vision had degraded so much during his detention in Guantanamo that he was unfit for other employment. Garcia Montes said that he planned to file a "multimillion dollar suit" against the U.S. Government for damages, including post-traumatic stress and vision loss on the part of his client. The attorney told reporters that Abderrahaman's suffering had been such that he could no longer recall specific elements of his detention in Guantanamo, nor of his time in Pakistan and Afghanistan. Abderrahaman roundly denied ever having been a terrorist and insisted that his prior references to himself as a "martyr" referred to his treatment in detention. Prompted by his

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attorney, Abderrahaman related his alleged mistreatment in U.S. detention, including the presence of a powerful lightbulb in his cell that impeded sleep and threats that he would never see his family again. Abderrahaman said he planned to write a book about his experiences.  
//IKASSRIEN ALSO TO BE RELEASED//

18. (U) Following the Supreme Court decision in the Abderrahaman case, National Court prosecutors announced that they would support the release on bail of Moroccan national Lahcen Ikassrien, who was transferred to Spain from Guantanamo in July 2005 and held in preventive detention since his arrival. This comes less than a month after prosecutors filed formal charges against Ikassrien, seeking an eight-year prison term on charges of membership in a terrorist organization. The case against Ikassrien is based on three police interviews with him when he was being held at Guantanamo (by the same investigators who interviewed Abderrahaman) and on telephone intercepts developed in the course of the Barakat Yarkas investigation, the same evidence thrown out in the Abderrahaman case. (NOTE: According to press reports, the Spanish police intercepts place Ikassrien in Istanbul, Turkey in November 2000 along with suspected terrorists Amer Azizi and Said Berraj. In a separate intercept, Ikassrien requested assistance with documentation

from al-Qa'ida cell leader Barakat Yarkas). Prosecutors have maintained that Ikassrien's own testimony since his transfer from Guantanamo incriminates him since he has acknowledged traveling to Afghanistan to "collaborate with the Islamist regime." That is disputed by court observers who say that Ikassrien's statements to the National Court have been substantially less incriminating than those of Abderrahaman

¶9. (U) Ikassrien's attorney has already homed in on Guantanamo as key to his client's defense, focusing on Ikassrien's alleged mistreatment while in US custody. The attorney's request claims that "while Ikassrien was in Guantanamo, he was gassed, beaten, mistreated, and insulted, and subject to repeated inspections, during which the military officials undertaking the inspections would damage or destroy (Ikassrien's) books, especially the Koran." Ikassrien's attorney also alleges that his client was forcibly injected with a substance that led to severe itching that continues to affect him.

//COMMENT//

¶10. (C) Spanish counter-terrorism legislation was designed over three decades to combat ETA, a group with a defined structure, doctrine, and modus operandi. Police, prosecutors, and magistrates working on investigations of the far more amorphous cells of Islamist extremist have struggled to develop evidence sufficient to meet the high threshold set by the Spanish Supreme Court. This was reflected in an earlier decision by the Supreme Court to reverse the convictions of several Barakat Yarkas cell members and to reduce Barakat Yarkas' sentence on the basis that prosecutors had not proved his connection to the September 11 attacks in the U.S. (USG observers of the trial noted that the evidence on the September 11 connection was indeed weak). Clearly, in the Abderrahaman case the Supreme Court was also eager to use this case as a platform to criticize U.S. detainee policies in Guantanamo. While this sentiment has not influenced Spanish police to reduce their close collaboration with the U.S. in fighting terrorism, we must take it into account as we pursue increased judicial cooperation with Spain in terrorism cases. The Spanish judiciary carefully guards its independence (a major achievement of the post-Franco era) and has not shied from taking decisions that cut across the objectives of the Spanish Government.

AGUIRRE